

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL NO. 4:04CR106 RAS/DDB
	§	
BRANDON EUGENE CARY (11)	§	

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on August 5, 2015 to determine whether Defendant violated his supervised release. Defendant was represented by Frank Henderson. The Government was represented by Chris Eason.

On January 5, 2005, Defendant was sentenced by the Honorable Richard A. Schell, United States District Judge, to a sentence of 121 months imprisonment followed by a 5-year term of supervised release for the offense of Conspiracy to Possess with Intent to Distribute Cocaine Base.

On August 20, 2009, after considering a motion filed pursuant to Title 18 U.S.C. § 3582(c)(2), the Court reduced the imprisonment term to 120 months. Defendant began his term of supervision on July 2, 2012.

On June 22, 2015, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender under Supervision (the "Petition") (Dkt. 1603). The Petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall refrain from any unlawful use of a controlled substance; and (2) Defendant shall refrain from excessive use of alcohol and shall not

purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or paraphernalia related to such substances, except as prescribed by a physician.

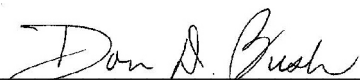
The Petition alleges that Defendant committed the following violations: (1) On June 11, and August 7, 2013, Defendant submitted urine specimens which tested positive for marijuana. Alere Laboratory testing confirmed the use of the substance; (2) On March 3, 17, 21, and 26, and April 7, 2015, Defendant submitted urine specimens that tested positive for marijuana. Alere Laboratory testing confirmed new use of marijuana prior to the submission of each test; (3) Additionally, on April 21, and 30; May 6, 7, 20 and 29, 2015; Defendant submitted urine specimens that tested positive for marijuana. Alere Laboratory testing confirmed the use of said substance; however, no determination has been made as of June 22, 2015 if any of the test results are from residual use.

At the hearing, Defendant entered a plea of true to the alleged violations. Defendant waived his right to allocute before the district judge and his right to object to the report and recommendation of this Court. The Court finds that Defendant has violated the terms of his supervised release.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984 and having considered the arguments presented at the August 5, 2015 hearing, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of eight (8) months, with no supervised release to follow. The Court further recommends that Defendant's term of imprisonment be carried out in FCI Texarkana, if appropriate.

SIGNED this 18th day of August, 2015.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE